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ARIZONA ATTORNEY GENERAL

March 8, 1985

Mr. Timothy Barrow  
Director  
Arizona Department of Racing  
1645 West Jefferson  
Phoenix, Arizona 85007

Re: I85-034 (R84-217)

Dear Mr. Barrow:

You have requested assistance in determining the amount of tax due on monies wagered at a facility to which races are televised and which is not located in the same county as the racetrack where the racing actually takes place. A.R.S. § 5-111.B requires a holder of a permit to conduct racing<sup>1</sup> to pay a percentage of "all monies handled in the pari-mutuel pool operated by the permittee" to the state based upon a statutory formula which varies according to the size of the county in which the pari-mutuel pool is located. Specifically, A.R.S. § 5-111.B provides:

During the period of any permit for dog racing a permittee in counties having a population of seven hundred thousand or more, as shown by the last United States census, shall receive ten and one-half per cent of the gross amount of monies handled in a pari-mutuel pool and the state shall receive seven and one-half per cent of all monies

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1. "Permit" means a permit for a racing meeting issued under the provisions of Article 1, Chapter 1, Title 5 of the Arizona Revised Statutes. A.R.S. § 5-101.17.

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handled in the pari-mutuel pool operated by the permittee, to be paid daily during the racing meeting. During the period of any permit for dog racing a permittee in all other counties shall receive twelve and one-half per cent of the gross amount of the first sixty-five thousand dollars handled in a pari-mutuel pool for each separate racing program, and ten and one-half per cent of the gross amount exceeding sixty-five thousand dollars. The state shall receive five and one-half per cent of the gross amount of the first sixty-five thousand dollars handled in the pari-mutuel pool for each separate racing program operated by the permittee and seven and one-half per cent of all such monies handled exceeding sixty-five thousand dollars, to be paid daily during the racing meeting.

Thus, the tax payable on monies placed in a pari-mutuel pool depends upon the size of the county in which the permittee has chosen to conduct races.

Your inquiry arises because a permittee is authorized to televise races from its racing facility to one "additional facility," (teletrack) and to accept wagers at both facilities. At least one entity has been authorized to conduct wagering in an enclosure in one county and at a teletrack which is located in another county. Because of the difference in tax rates in the two counties involved, this permittee claims that that portion of the handle wagered at the teletrack is subject to the rate applicable to the county in which the teletrack is located. We think that this interpretation of the applicable statutes is incorrect.

A.R.S. § 5-111.B requires that a permittee pay a percentage "of all monies handled in the pari-mutuel pool operated by the permittee." We think that the dispositive determination is the situs of the pool. Paragraph B must be read in context with Paragraph A of that same statute which places the situs of the pool at the enclosure where the racing is conducted, rather than the situs of the teletrack. Paragraph A provides, in pertinent part:

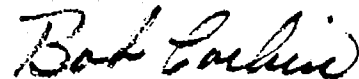
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Wagering shall be conducted by a permittee only by the pari-mutuel method and only on the dates for which racing has been authorized by the commission. Wagering for a licensed racing meeting shall be conducted by a permittee only within an enclosure in which authorized racing takes place and at one additional facility owned or leased by a permittee which is used by a permittee for handling wagering, and as part of the pari-mutuel system and pool of the permittee at the enclosure where the authorized racing is conducted.

A.R.S. § 5-111.A.

Monies wagered at a teletrack must be included in the pari-mutuel "pool of the permittee at the enclosure where the authorized racing is conducted." The tax rate applicable to that entire pool is determined by the county in which the racing facility is located.

Sincerely,



BOB CORBIN  
Attorney General

BC/ERE/bl